



**Billing code: 4910-9X**

**DEPARTMENT OF TRANSPORTATION**

**Board of Contract Appeals**

**48 CFR Chapter 63**

**Office of the Secretary**

**49 CFR Part 6**

**[Docket No. OST-2013-0142]**

**RIN 2105-AE27**

**Update of Department of Transportation Regulations; Termination of the Department of Transportation Board of Contract Appeals**

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation is revising its regulations by removing chapter 63 of Title 48 of the Code of Federal Regulations (CFR) and amending 49 CFR part 6. These revisions result from our ongoing efforts to review and improve our regulations, and will harmonize the CFR with Departmental restructuring required by statutory changes.

**DATES:** This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jill Laptosky, Attorney, Office of Regulation, Office of General Counsel, 202-493-0308, jill.laptosky@dot.gov.

**SUPPLEMENTARY INFORMATION:** On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999, Pub. L. No. 106-159, 113 Stat. 1748, removing regulatory authority over motor carriers from the Federal Highway Administration and vesting that authority in the newly created Federal Motor Carrier Safety Administration (FMCSA). Then, on November 25, 2002, the President signed the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. In addition to creating the Department of Homeland Security (DHS), the Homeland Security Act reorganized certain agencies of the Federal executive branch; in particular, the Homeland Security Act transferred the United States Coast Guard (USCG) from DOT to the newly created DHS. *See id.* at Sec. 1704. This final rule revises the Department's regulations to reflect the creation of FMCSA and the transfer of USCG to DHS.

On January 6, 2006, the President signed the National Defense Authorization Act for FY 2006, Pub. L. No. 109-163 (the Act), establishing the Civilian Board of Contract Appeals (CBCA). Section 847 of the Act vests the CBCA with jurisdiction over claims that previously would have been filed before the boards of contract appeals of individual agencies. In light of this change, references to the now-defunct Department of Transportation Board of Contract Appeals are being removed from our regulations.

Prior to the modifications announced in this final rule, 49 CFR 6.5, concerning the applicability of the Equal Access to Justice Act in DOT proceedings, referred to the "agency board of contract appeals." This regulatory language is being revised to reflect the statutory changes discussed above, as well as the updated DOT organizational structure.

DOT is publishing this final rule without notice and comment under the "good cause" exemption of the Administrative Procedure Act (5 U.S.C. 553). The good cause exemption allows agencies to dispense with notice and comment if those procedures are impracticable, unnecessary, or contrary to the public interest. We have determined that, given the obsolete nature of the regulations affected by this final rule,

notice and comment are unnecessary. For these same reasons, we have determined that good cause exists for the final rule to become effective immediately.

## Regulatory Analyses and Notices

### *Executive Order 12866 and Executive Order 13563*

Executive Orders 12866 and 13563 direct agencies to assess all the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This final rule is not a significant regulatory action as defined by Executive Order 12866 and, therefore, is not subject to review by the Office of Information and Regulatory Affairs. As this rule removes and updates obsolete regulatory provisions, we expect there to be no costs related to the changes made in this rule.

### *Executive Order 13132: Federalism*

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, within the meaning of Executive Order 13132.

### *Unfunded Mandates Reform Act*

This final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$156 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Reform Act of 1995.

### *Regulatory Flexibility Act*

Since notice and comment is not necessary for this rulemaking, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601–612) do not apply.

#### *Paperwork Reduction Act*

This final rule does not contain information collection requirements subject to the Paperwork Reduction Act.

#### *National Environmental Policy Act*

The agency has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, "[p]romulgation of rules, regulations, and directives." 23 CFR 771.117(c)(20). The purpose of this rulemaking is to remove obsolete language from the Department's regulations. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

#### **List of Subjects**

48 CFR Parts 6301 and 6302

Administrative practice and procedure, Government procurement.

## 49 CFR Part 6

Claims, Equal access to justice, Lawyers.

For the reasons set forth in the preamble, in accordance with sec. 847 of Pub. L. No. 109-163, (119 Stat. 3391), OST amends 48 CFR by removing chapter 63 and, under the same authority, as well as the authority in sec. 1704 of Pub. L. No. 107-296 (116 Stat. 2314), OST amends 49 CFR part 6 as follows:

### TITLE 48 — FEDERAL ACQUISITION REGULATIONS SYSTEM

#### CHAPTER 63 — DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS

1. Remove Chapter 63.

### TITLE 49 — TRANSPORTATION

#### PART 6 – IMPLEMENTATION OF EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

2. The authority citation for part 6 continues to read as follows:

Authority: 5 U.S.C. 504; 28 U.S.C. 2412.

3. Amend § 6.5 by revising paragraph (a) to read as follows:

#### **§6.5 Proceedings covered.**

(a) The Act applies to adversarial adjudications conducted by the Department of Transportation.

These are adjudications under 5 U.S.C. 554 in which the position of the Department is represented by an attorney or other representative who enters an appearance and participates in the proceeding. Coverage of the Act begins at designation of a proceeding or issuance of a charge

sheet. Any proceeding in which the Department may prescribe or establish a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise “adversary adjudications.” For the Department of Transportation, the types of proceedings covered include, but may not be limited to: National Highway Traffic Safety Administration (NHTSA) automotive fuel economy enforcement under 49 CFR Part 511; Federal Motor Carrier Safety Administration (FMCSA) enforcement of motor carrier safety regulations under 49 CFR 386; and the Department's aviation economic enforcement proceedings conducted by its Office of Aviation Enforcement and Proceedings pursuant to 14 CFR Chapter II. Also covered is any hearing conducted under Chapter 38 of title 31 of the U.S. Code or the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq).

\* \* \* \* \*

Issued under authority delegated in 49 CFR 1.27(c).

Molly J. Moran

Acting General Counsel

[FR Doc. 2016-24052 Filed: 10/14/2016 8:45 am; Publication Date: 10/17/2016]